

CONTRA COSTA Co Recorder Office  
STEPHEN L. WEIR, Clerk-Recorder  
DOC- 2006-0186168-00

Tuesday, JUN 13, 2006 14:22:00  
CER \$11.50 FRE \$0.00

Ttl Pd \$11.50

Nbr-0003280423  
lrc/R9/1-9

**Recording Requested By:**

Bulin & Company, Inc.  
2920 Dr. Andrew J. Brown Avenue  
Indianapolis, IN 46205

**When Recorded, Mail To:**

Bruce H. Wolfe, Executive Officer  
California Regional Water Quality Control Board  
San Francisco Bay Region  
1515 Clay Street, Suite 1400  
Oakland, California 94612

JUN 14 2006

**COVENANT AND ENVIRONMENTAL RESTRICTION  
ON PROPERTY**

**2775 GIANT ROAD, RICHMOND, CALIFORNIA**

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 8<sup>th</sup> day of JUNE, 2006 by Bulin & Company, Inc. ("Covenantor") who is the Owner of record of that certain property situated at 2775 Giant Road, in the City of Richmond, County of Contra Costa, State of California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (such portion hereinafter referred to as the "Burdened Property"), for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region (the "Board"), with reference to the following facts:

A. The Burdened Property and groundwater underlying the property contains hazardous materials.

B. Contamination of the Burdened Property. Soil at the Burdened Property was contaminated by solvents used during activities conducted onsite by Bulin & Company, Inc. which included manufacturing of various cleaning compounds, and by fuel hydrocarbons and metals that most likely migrated from offsite sources of unknown origin. The onsite operations resulted in contamination of soil and groundwater with PCE, TCE, cis-1,2-DCE, and 1,1,1-TCA. Migration from offsite sources resulted in contamination of soil and groundwater with gasoline and diesel fuels and metals including arsenic. These contaminants constitute hazardous materials as that term is defined in Health & Safety Code Section 25260. The use of aboveground solvent storage tanks, which appear to be the main source of solvent contamination, has been discontinued. No remediation is planned. Natural attenuation processes have already decreased contaminant concentrations at the site, and are expected to further reduce the levels of contaminants with time.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil and groundwater on the Burdened Property. Without the protective measures, covenants, conditions

and restrictions contained in this document, exposure to these contaminants could take place via direct ingestion or in-place contact with groundwater, and/or dermal contact, inhalation, or ingestion of soil by humans. The risk of public exposure to the contaminants has been substantially lessened by the controls described herein.

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is used for light industrial purposes including manufacturing, office, and equipment yard, and is adjacent to light industrial land uses.

E. Full and voluntary disclosure to the Board of the presence of hazardous materials on the Burdened Property has been made and extensive sampling of the Burdened Property has been conducted.

F. Covenantor desires and intends that in order to benefit the Board, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that may result from hazardous materials that may have been deposited on portions of the Burdened Property.

## ARTICLE I GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of hazardous materials. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the Board and all Owners and Occupants. Each and all of the Restrictions are imposed upon the entire Burdened Property unless expressly stated as applicable to a specific portion of the Burdened Property. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the Board.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, leasing, or possession of such Burdened Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the Board and the Owners and Occupants of the Burdened Property and that the interest of the Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases

of any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed or lease.

1.4 Purpose. It is the purpose of this instrument to convey to the Board real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

## ARTICLE II DEFINITIONS

2.1 Board. "Board" shall mean the California Regional Water Quality Control Board for the San Francisco Bay Region and shall include its successor agencies, if any.

2.2 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Burdened Property.

2.3 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or any portion of the Burdened Property.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, who hold title to all or any portion of the Burdened Property.

## ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Burdened Property as follows:

- a. Development of the Burdened Property shall be restricted to industrial, commercial or office space;
- b. No residence for human habitation shall be permitted on the Burdened Property;
- c. No hospitals shall be permitted on the Burdened Property;
- d. No schools for persons under 21 years of age shall be permitted on the Burdened Property;
- e. No day care centers for children or day care centers for Senior Citizens shall be permitted on the Burdened Property;
- f. No Owners or Occupants of the Property or any portion thereof shall conduct any

excavation work on the Property, unless expressly permitted in writing by the Board. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Covenantor or his agent in accordance with all applicable provisions of local, state and federal law;

g. No Owners or Occupants of the Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including but not limited to, domestic, potable, or industrial uses, unless expressly permitted in writing by the Board.

h. The Covenantor agrees that the Board, and/or any persons acting pursuant to Board orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code.

i. No Owner or Occupant of the Burdened Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Burdened Property. All use and development of the Burdened Property shall preserve the integrity of any capped areas.

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the Board, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Board to file civil actions against the Owner as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument which shall accompany all purchase agreements or leases relating to the property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soils and in the ground water under the property, and is subject to a deed restriction dated as of \_\_\_\_\_, 2006, and recorded on \_\_\_\_\_, 2006, in the Official Records of Contra Costa County, California, as Document No. \_\_\_\_\_, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

#### ARTICLE IV VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or any portion thereof may apply to the Board for a written variance from the provisions of this Covenant.

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or a portion thereof may apply to the Board for a termination of the Restrictions as they apply to all or any portion of the Burdened Property.

4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

## ARTICLE V MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Burdened Property or any portion thereof to the general public.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

*If To: "Covenantor"*

Brulin & Company, Inc.  
2920 Dr. Andrew J. Brown Avenue  
Indianapolis, IN 46205

*If To: "Board"*

Regional Water Quality Control Board  
San Francisco Bay Region  
Attention: Executive Officer  
1515 Clay Street, Suite 1400  
Oakland, California 94612

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Board. This instrument shall be recorded by the Covenantor in the County of

Contra Costa within ten (10) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.  
Covenantor: Brulin & Company, Inc.

By: Kim D. Embling  
Title: CEO  
Date: 6/08/06

Agency: State of California  
Regional Water Quality Board,  
San Francisco Bay Region

By: Pruce H. Adge  
Title: Executive Officer  
Date: 6/13/06

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Alameda

SS.

On 6/13/2006

Date

before me,

Howard Leong, Notary Public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

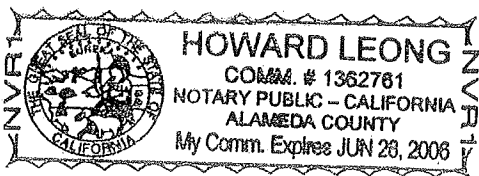
personally appeared

BRUCE H WOLFE

Name(s) of Signer(s)

☐ personally known to me

☒ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Howard Leong  
Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document:

ENVIRONMENTAL COVENANT & RESTRICTION

Document Date:

Number of Pages:

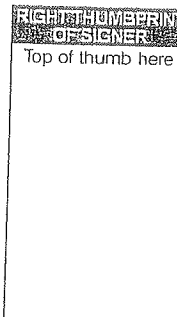
Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer

Signer's Name:

- ☐ Individual
- ☐ Corporate Officer — Title(s): \_\_\_\_\_
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: \_\_\_\_\_

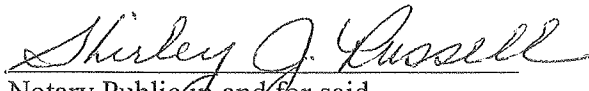
Signer Is Representing: \_\_\_\_\_



INDIANA  
STATE OF CALIFORNIA     )  
  )  
COUNTY OF HENDRICKS     )

On JUNE 8, 2006 before me, the undersigned a Notary Public in and for said state,  
personally appeared KIM ESSENBURG, personally known to me or proved to me on  
the basis of satisfactory evidence to be the person who executed the within instrument.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Notary Public in and for said  
County and State

STATE OF CALIFORNIA     )  
  )  
COUNTY OF \_\_\_\_\_     )

On \_\_\_\_\_, 2006 before me, the undersigned a Notary Public in and for said state,  
personally appeared \_\_\_\_\_, personally known to me or proved to me on the  
basis of satisfactory evidence to be the person who executed the within instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said  
County and State



## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

Portion of Lot 202, map of Rancho San Pablo, filed March 1, 1894, Contra Costa County Records, described as follows:

Beginning on the west line of the right of way of The Atchison, Topeka and Santa Fe Railroad at the south line of the parcel of land described in the deed to Chemurgic Corporation, recorded March 1, 1940, Book 542, Official Records, Page 192; thence from said point of beginning south  $12^{\circ} 10' 06''$  west along said west line, 252.81 feet; thence north  $86^{\circ} 22' 54''$  west, parallel with the south line of said Chemurgic Corporation parcel, 416.81 feet; thence north  $3^{\circ} 27' 06''$  east, 250 feet to said south line, distant thereon north  $86^{\circ} 22' 54''$  west, 454.39 feet from the point of beginning; thence south  $86^{\circ} 22' 54''$  east along said south line, 454.39 feet to the point of beginning.

I hereby certify that this is a true  
and correct copy of the original on file  
in this office.

ATTEST: JUN 19 2006

STEPHEN L. WEIR  
County Recorder  
Contra Costa County, California

By  Deputy Clerk